

## INDUSTRY, LABOR AND HUMAN RELATIONS 11

the person who will be responsible for keeping them; and that these payroll records will not be removed from there without prior notification to the municipality and that they will be retained and made available for a period of at least 3 years following the completion of the entire project of public works.\*

**History:** Cr. Register, January, 1976, No. 241, eff. 2-1-76.

**Ind 90.15 Adjusting minimum project cost of completion.** Minimum threshold estimated project cost of completion figures for section 66.293 (3) (c), Wis. Stats., for projects of public works where a single trade is involved and projects of public works where more than one trade is involved shall be adjusted as soon as possible after January 1, 1976 and every 2 years thereafter on the basis of changes in the United States department of commerce's composite cost index, or other similar index.\*

**History:** Cr. Register, January, 1976, No. 241, eff. 2-1-76.

**Ind 90.155 Minimum project costs.** Effective December 1, 1976, section 66.293 (3), Wis. Stats. shall not apply to any public works project for which the estimated project costs of completion is below \$4,100 where a single trade is involved and \$41,000, where more than one trade is involved on such project.

**History:** Cr. Register, November, 1976, No. 251, eff. 12-1-76.

**Ind 90.16 Cost of inspection.** The request of any person for an inspection under section 66.293 (3) (m), Wis. Stats., shall be made in writing to the department. The letter or written statement should identify the project and, if possible, employers and trades or occupations involved, and should give as much evidence of underpayment and noncompliance as possible, and state that the person is willing to pay for the complete cost of the inspection. The department shall maintain records on the cost(s) it incurs in making the inspection(s) and will charge this amount to the person who made the request.

**History:** Cr. Register, January, 1976, No. 241, eff. 2-1-76.

**Ind 90.17 Date of notification.** The date of notification by mail shall be the date entered on the document unless established otherwise by proof.

**History:** Cr. Register, January, 1976, No. 241, eff. 2-1-76.

## EXPLANATORY FOOTNOTES FOR CHAPTER IND 90

\*Specific economic and fringe benefits. (Interpretation)

(a) The term "other economic benefit" as used in section 103.49, Wis. Stats., is the so-called "open end" provision. This was included so that new fringe benefits may be recognized by the department as they become prevailing. A particular fringe benefit need not be recognized beyond a particular area in order for the department to find that it is prevailing in that area.

(b) To insure against considering and giving credit to any and all economic and fringe benefits some of which might be illusory or not genuine, the qualification required by the department is that such economic and fringe benefits must be bona fide. No difficulty is anticipated in determining whether a particular economic or fringe benefit is bona fide in the ordinary case where benefits are those common in the construction industry and which are established under a usual fund, plan or program. The following are typical conventional economic and fringe benefits: medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness

insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide economic and fringe benefits, but only where the employer is not required by other federal, state, or local law to provide any of such benefits. Employers may take credit for contributions made under such conventional plans without requesting the approval of the department.

(c) Economic and fringe benefits which an employer is obligated to provide under other federal, state, or local law are excluded. No credit may be taken under section 66.293, Wis. Stats., for the payments made for such benefits. For example, payments for workmen's compensation insurance under either a compulsory or elective state statute are not payments for economic or fringe benefits under section 66.293, Wis. Stats. The omission in section 103.49, Wis. Stats., of any expressed reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide economic and fringe benefits under section 103.49, Wis. Stats.

<sup>2</sup> Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the employer of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employes in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employe contributions, will be borne by the employer. In such case the return by the insurance company to the employer of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the employer, will not be deemed a recapture or diversion by the employer of contribution made pursuant to the plan.

<sup>3</sup> The phrase "fund, plan or program" is intended merely to recognize the various types of arrangements commonly used to provide economic and fringe benefits through employer contributions. In interpreting this phrase, the department will be guided by the experience of the United States department of labor and United States treasury department in administering the employe retirement income security act of 1974, of the United States department of labor in administering other related programs, and of the Wisconsin state insurance commissioner in administering employe welfare funds under Chapter 211, Wis. Stats.

<sup>4</sup> These provisions are intended to permit the consideration of economic and fringe benefits meeting the requirements and which are provided from the general assets of an employer.

<sup>5</sup> As in the case of other economic and fringe benefits payable under section 66.293, Wis. Stats., an unfunded plan or program must be "bona fide" and not a mere simulation or sham for avoiding compliance with section 66.293, Wis. Stats.

<sup>6</sup> (a) Types of wage determinations:

1. When economic and fringe benefits are prevailing for various classes of laborers, workmen and mechanics in the area, such benefits are includable in any department determination. Illustrations contained in footnote 10, Ind 90.04 set forth some of the different types of wage determinations which may be made in such cases.

2. When economic and fringe benefits for various classes of laborers, workmen and mechanics do not prevail in the area, the wage determination will contain only the hourly basic rates of pay, that is, only the cash wages which are prevailing for the various classes of laborers, workmen and mechanics. An illustration of this situation is contained in footnote 10, Ind 90.04.

(b) Subsequent certifications:

1. Subsequent certifications by the department modifying, superseding, correcting or otherwise changing the provisions of the original decision or certification for a given wage determination request, must be made within 30 days after the department receives the request for the wage determination.

2. If bids are not solicited or contract is not awarded by direct negotiation or if the project is rebid or renegotiated after 120 days after the date of the original certification, then the municipality must request a new determination prior to soliciting bids or prior to entering into a contract through direct negotiation.

3. Requests for prevailing wage rates for trades or occupations which are required in the work contemplated, but which are not included in the original certification, should be requested before bids are solicited.

**INDUSTRY, LABOR AND HUMAN RELATIONS 12-1**

**<sup>7</sup> The State of Wisconsin secretary of transportation must apply for a determination under section 66.293 (3), Wis. Stats., if he is an agent for a municipal sponsor of a project of public works and stands in the place of the municipality.**